EXHIBIT #3
DATE 1/9/07
HB 144

May 29, 1996

Senator Mike Halligan
269 W. Front
P.O. Box 8234
Missoula, Montana 59802

Dear Senator Halligan:

I am writing in regard to your recent correspondence concerning the application of section 2-18-620, MCA. Because this office has had at least three inquiries concerning this statute, I am taking this opportunity to formally document this office's interpretation of the statute.

Section 2-18-620, MCA, was enacted by Chapter 107, Laws of 1975, and currently states:

> **2-18-620. Mandatory leave of absence for employees holding public office -- return requirements.** (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.
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> (2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.
>
> (3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

Section 1, of Chapter 107, Laws of 1975 was enacted as section 59-1011 R.C.M. 1947. It stated:

> **Mandatory leave of absence for employees holding public office -- return requirements.** (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed one hundred eighty (180) days per year, while they are performing public service.
>
> (2) Employees granted a leave shall make arrangements to return to work within ten (10) days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

Title 59, chapter 10, R.C.M. 1947, dealt with leave of absence of employees. Section 59-1007, R.C.M. 1947, provided that the term "employee", as used in Title 59, part 10, R.C.M. 1947, did not refer to or include elected state, county, or city officials or schoolteachers. The arrangement and application of Title 59, chapter 10, R.C.M. 1947, was carried forward into the Montana Code Annotated. Title 59, chapter 10, R.C.M. 1947, became Title 2, chapter 18, part 6, MCA. The exclusion of elected officials from the definition of "employee" is contained in section 2-18-601(4), MCA. The exception concerning section 2-18-620, MCA, in the introduction to section 2-18-601, MCA, was added by the Code Commissioner in 1983 and was designed to clarify arrangement as authorized sections 1-11-101(2) and 1-11-204(3), MCA, and to correct a codification error.
Section 2-18-620, MCA, remained substantively unchanged until amended by Chapter 692, Laws of 1991. Chapter 692, Laws of 1991, amended section 2-18-620, MCA, to require that:

> Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

In 1975, when section 2-18-620, MCA, was originally enacted, it was customary to assign section numbers for the newly enacted provisions as a part of the bill. It made at least some sense to codify the new provision in the portion of the laws governing leave for public employees because after election or appointment to public office, the "employees" were public officers.

In Gaub v. Milbank Ins. Co., 220 Mont. 424, 715 P.2d 443 (1986), the Montana Supreme Court determined that if a statute requires construction, a review of the title of the original bill is a necessary first step to aid that construction.

The title to Chapter 107, Laws of 1975, provided:

> AN ACT REQUIRING ALL EMPLOYERS TO GRANT TO EMPLOYEES WHO ARE ELECTED OR APPOINTED TO PUBLIC OFFICE A LEAVE OF ABSENCE OF NOT MORE THAN ONE HUNDRED EIGHTY (180) DAYS PER YEAR WHILE PERFORMING PUBLIC SERVICE; AND REQUIRING EMPLOYEES TO MAKE ARRANGEMENTS TO RETURN TO WORK WITHIN TEN (10) DAYS FOLLOWING THE COMPLETION OF SUCH PUBLIC SERVICE. (emphasis added)

Chapter 107, Laws of 1975, was introduced as House Bill No. 220. The Supreme Court will resort to legislative history only if legislative intent cannot be determined from the plain wording of the statute. Lovell v. St. Comp. Mut. Ins. Fund, 260 Mont. 279, 860 P.2d 95 (1993).

The sponsor of House Bill No. 220 was Representative Joe Brand. According to the minutes of the House Labor and Employment Relations Committee on February 5, 1975, Representative Brand stated that:

> . . . the bill would make all state employers allow their employees to take a leave of absence for any public office. He felt all segments of the economy should be represented, otherwise we will continue to downtrodden [sic] the small class.

Representative Johnson said that at that time he still did not have a leave of absence from his company to serve during the session. The bill was opposed by Mountain Bell because the 180-day provision would cover 70% of the working year and because leaves of absence are private contracts and should not be handled at the state level.

In the February 26, 1975, hearing before the Senate Labor and Employment Relations Committee, Representative Brand stated:

> This bill allows anyone, no matter where they work, they can come here to the legislature and serve just like the rest of us. All input available should be brought here to the legislature. Any employer should allow an employee to serve.

The primary testimony in opposition to the bill was provided by Mr. Robert N. Helding, representing the St. Regis Paper Company and the Montana Taxpayers Association. Mr. Helding said that the main concern was for the small employer that had two or three employees. If the key employee ran for office, the business might have to shut down until the employee returned.

In response to a question, Representative Brand stated that there were two Representatives in the House who were told that if they ran for office, they might not have their jobs.

The title and the legislative history of Chapter 107, Laws of 1975, clearly establish that the law was intended to apply to all employers, public and private. Therefore, the 1983 Code Commissioner correction accurately reflects the meaning of the law. The intended meaning was also clearly buttressed by the 1991 amendments to section 2-18-620, MCA.

I hope that this information resolves the controversy surrounding this issue. If you have any questions or if I can provide additional information, please feel free to contact me.

Sincerely,

Gregory J. Petesch
Director of Legal Services

cc: Jeanne Bender